IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3015 OF 2005

Shri Pandurang N. Korgaonkar ..Petitioner.
since deceased through his LRs:-
Smt. Indumati P. Korgaonkar & Ors.

Versus

Shri Anil Prabhakarpant Korgaonkar & Anr...Respondents

Mr. Amit B. Borkar for the Petitioner.
Mr. D.S. Sawant for the Respondent No.1.

CORAM : S. A. BOBDE, J.

DATED : 29TH JUNE, 2005.

P.C.:

1. Rule. Rule made returnable forthwith. Mr. Sawant waives notice for Respondents. Heard by consent.

2. The petitioner has challenged the order of the Joint Civil Judge, Jr. Dvn., Kolhalpur in Regular Darkhast No. 89 of 2004.

3. The petitioner is a judgment debtor and the respondent is decree holder. The respondent has sued for properties defined under paragraph 34 of the plaint. The suit properties comprises of 3 godowns of the measurement given in that paragraph situated at City Survey Numbers 345/2. It appears that several attempts were made by the petitioner to resist the execution of the decree. However, those attempts were defeated by the rejection of Exhs. 23,26,28 and 29. It appears that in paragraph -8 of Exh. 28, the petitioner has accepted the measurements of the three godowns in question. Notwithstanding this, the petitioner preferred the present petition again on the ground that the suit property is not identifiable. Mr. Borkar, learned counsel for the petitioner submitted that though the measurements may have been admitted, the boundaries of the properties have been introduced for the first time and therefore, the execution is not tenable. There appears to be no substance in this objection. What is of utmost importance is the fact of identification of the suit

property and there seems to be no dispute about that. In this case, the learned Executing Court has observed that these three godowns, which have been measured by Exh.89 and which measurements have been admitted by the petitioner, do not create any doubt. Moreover, there is no report from the bailiff that the suit property is not identifiable. In the circumstances, the objections raised by the petitioner found to be false and have been termed by the executing court as an attempt to frustrate the action of execution of the decree. I am of the view that there is no infirmity, jurisdictional or otherwise in the order of the executing court. Mr. Sawant, the learned counsel for the respondent relied on the judgment of the Supreme Court in the case of Ravinder Kaur vs. Ashok Kumar & Anr., reported in (2003) 8 Supreme Court Cases 289, in which similar attempts of the judgment debtor have been deprecated by the Supreme Court. The Supreme Court observed in that case that - "raising a dispute in regard to the description or identity of the suit schedule property or a dispute in regard to the boundary of the suit schedule property is only a bogey to delay the eviction by the abuse of the process of court. Courts of law should be careful enough to see through such diabolical plans of the judgement- deter

to deny the decree-holders the fruits of the decree obtained by them. These type of errors on the part of the judicial forums only encourage frivolous and cantankerous litigations causing law's delay and bringing bad name to the judicial system."

4. Admittedly no application for better particulars was filed. Moreover the decree in the suit is admittedly been confirmed by the appellate court. In these circumstances, I am of the view, that the present attempt is also an attempt to abuse the process of court. Mr. Sawant, the learned counsel for the Respondents states that the court had imposed cost in the sum of Rs. 9000/- while dismissing Exh. 28. Even those costs have not been yet paid by the petitioner. In the circumstances, in addition thereto, I consider it appropriate to dismiss the present petition with costs, quantified at Rs. 10,000/-.

29.06.2005 (S.A.BOBDE,J.)

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